

KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP  
David M. Friedman (DF-4278)  
Joseph A. Gershman (JG-8275)  
1633 Broadway  
New York, New York 10019  
Tel: (212) 506-1700  
Fax: (212) 506-1800

*Counsel to Plaintiff Adelpia Recovery Trust*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re	)	
	)	
ADELPHIA COMMUNICATIONS CORP., <i>et al.</i> ,	)	Chapter 11 Case
a Delaware corporation,	)	Case No. 02-41729 (REG)
	)	
Debtors.	)	
	)	
ADELPHIA RECOVERY TRUST,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE
v.	)	NO. 07 CIV 11152 (LMM)
	)	
PRESTIGE COMMUNICATIONS OF NC, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
ADELPHIA RECOVERY TRUST,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE
v.	)	NO. 07 CIV 11153 (LMM)
	)	
FPL GROUP, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	<b>DECLARATION OF</b>
	)	<b>JOSEPH A. GERSHMAN</b>

JOSEPH A. GERSHMAN, an attorney admitted to practice before this Court,  
declares under penalty of perjury as follow:

1. I am a member of the law firm of Kasowitz, Benson, Torres & Friedman LLP,

counsel to Plaintiff the Adelpia Recovery Trust ("Plaintiff") in the above-entitled action.

2. I am fully familiar with the statements set forth below based upon my personal knowledge.

3. I submit this declaration in support of the Reply Memorandum in Further Support of the Plaintiff's Motion to Withdraw the Reference.

4. Judge Morris assumed control of the case but it was nonetheless subject to a stay until September of 2006.

5. Judge Morris partially granted the Trust's request to limit the 30(b)(6) topics by striking one topic entirely during a telephone conference with the parties, and by ordering the parties to confer to further limit the scope of the topics.

6. In the Prestige Case there are 17 depositions that have been noticed and yet to be taken, and there are likely to be more.

7. The Prestige Defendants have sought the depositions of at least five more fact witnesses who were formerly employed by Adelpia.

8. The majority of the Prestige Defendants have not yet been deposed, which will entail at least another six depositions.

9. There are another six third party depositions that remain to be taken in the Prestige Case.

10. Neither Plaintiff nor Defendants has waived the right to recall witnesses who have already been deposed to give further testimony in the Prestige Case.

11. Document discovery is ongoing and Plaintiff has not yet served contention

interrogatories in the Prestige Case.

12. In the FPL Case, the Defendants have only served one set of limited formal document requests and interrogatories, there have been no depositions noticed or taken, there have been no dispositive motions filed, no interrogatories have been served, and the parties have only exchanged preliminary document productions.

13. The Prestige Defendants did not file a motion to dismiss the original complaint, did not file a motion to dismiss the amended complaint, and have not filed a motion for summary judgment, as they promised to do after Constance Campbell's deposition in July 2007.

14. Each and every one of the Defendants' seven document requests contains requests which overlap with the Bank Case including, with respect to (1) Adelphia's insolvency; (2) documents relating to the sale of Adelphia and the attendant valuations and appraisal of assets; (3) Adelphia and its subsidiary's income statements and balance sheet information; (4) financial documents relating to the CCH facility; (5) income statements for cost centers through the date of the closing of the sale with Time Warner and Comcast, (6) expert reports filed on behalf of Adelphia, Deloitte & Touche and the Rigas Family in the Deloitte litigation, and (7) Adelphia's federal tax returns filed in 2000 and 2006.

15. During depositions, the Prestige Defendants repeatedly ask witnesses questions regarding: (1) the Restatement; (2) Adelphia's financial condition generally; (3) the Covington & Burling Report; (4) the work of the Special Committee; (5) the Independent Director's knowledge of the Rigas fraud; (6) the co-borrowing agreements and (7) the "Super 10-K" and other SEC filings.

16. The documents attached hereto are true and accurate copies of the originals.

17. Attached hereto as Exhibit 1 is the FPL Sixth Amended Scheduling Order was filed on November 21, 2007, and so ordered on December 3, 2007.

18. Attached hereto as Exhibit 2 is the Prestige Fifth Amended Scheduling Order was so ordered on October 30, 2007.

19. Attached hereto as Exhibit 3 is the Bank Litigation Endorsed Letter from Judge McKenna outlining Discovery Phases was entered on October 24, 2007.

20. Attached hereto as Exhibit 4 is Judge Morris' Order dated March 22, 2007.

Dated: New York, New York  
December 24, 2007

/s/ Joseph A. Gershman  
Joseph A. Gershman

# Exhibit 1

ORIGINAL

GREENBERG TRAURIG, LLP  
 Adam D. Cole (AC 1335)  
 Karen Y. Bitar (KB 8764)  
 Kathryn S. Gostinger (KG 3984)  
 The MetLife Building  
 200 Park Ave.  
 New York, New York 10166  
 Telephone: (212) 801-9200  
 Facsimile: (212) 801-6400  
*Attorneys for Defendants FPL Group, Inc.  
 and West Boca Security, Inc.*

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

In re	)	
	)	Chapter 11 Case
ADELPHIA COMMUNICATIONS CORP., et al.,	)	
a Delaware corporation,	)	Case No. 02-41729
	)	(REG)
Debtors.	)	
ADELPHIA COMMUNICATIONS CORP.,	)	
et al.,	)	(Jointly Administered)
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
FPL GROUP, INC.,	)	Adv. Pro. No. 04-03295
et al.,	)	(REG)
	)	
Defendants.	)	

**SIXTH AMENDED SCHEDULING ORDER**

In an effort to coordinate discovery in this action with certain scheduling demands, including without limitation other adversary proceedings involving the Debtor, the parties jointly have agreed to, and propose to the Court, the following sixth amended discovery plan:

1. March 31, 2008 — Fact Discovery Must Be Completed
2. June 2, 2008 — The Party Bearing the Burden of Proof as to a Particular Issue Shall Serve Expert Reports
3. July 11, 2008 — Responsive Expert Reports Shall be Served
4. August 25, 2008 — All Expert Discovery, including expert depositions, to be completed
5. October 6, 2008 — Deadline to File and Serve All Dispositive Motions
6. October 20, 2008 — Final Pre-trial Order, provided that, in the event that dispositive motions are pending, this deadline shall be suspended until such time as the Court orders otherwise.
7. November 10, 2008 — Final Pre-trial Conference, provided that, in the event that dispositive motions are pending, this deadline shall be suspended until such time as the Court orders otherwise.
8. March 23, 2009 — Trial Date, provided that, in the event that dispositive motions are pending, this deadline shall be suspended until such time as the Court orders otherwise.

Dated: New York, New York  
November 21, 2007

Respectfully submitted,

KASOWITZ, BENSON, TORRES &  
FRIEDMAN LLP

GREENBERG TRAURIG LLP

By: 

David M. Friedman (DF 4278)  
Joseph A. Gershman (JG 8275)  
1633 Broadway  
New York, New York 10019  
(212) 506-1700  
*Counsel for Plaintiff*  
*the Adelpia Recovery Trust*

By: 

Adam D. Cole (AC 1335)  
Karen Y. Bitar (KB 8764)  
Kathryn S. Gostinger (KG 3984)  
200 Park Avenue  
New York, New York 10166  
(212) 801-9200  
*Counsel for Defendants*

s/ Robert E. Gerber 12/3/2007

SO ORDERED:



## Exhibit 2

TROUTMAN SANDERS LLP  
Harris B. Winsberg (Ga. Bar No. 770892)  
Douglas E. Ernst (Ga. Bar No. 249956)  
600 Peachtree Street, N.E., Suite 5200  
Atlanta, Georgia 30308-2216  
(404) 885-3000

Counsel for the Defendants

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

ADELPHIA COMMUNICATIONS CORP., et al., a  
Delaware corporation

Debtors.

---

ADELPHIA RECOVERY TRUST,

Plaintiff,

v.

PRESTIGE COMMUNICATIONS OF NC, INC.,  
JONATHAN J. OSCHER, LORRAINE OSCHER  
McCLAIN, ROBERT F. BUCKFELDER,  
BUCKFELDER INVESTMENT TRUST, and  
ANVERSE, INC.,

Defendants.

Chapter 11

Case No. 02-4-1729 (REG)

Jointly Administered

Adv. Pro. No. 04-03293 (CGM)

**FIFTH AMENDED SCHEDULING ORDER**

In an effort to coordinate discovery in this action, the parties jointly have agreed to, and propose to the Court, the following amended discovery plan:

1. March 15, 2008—Fact Discovery Must Be Completed;
2. April 30, 2008—The Party Bearing the Burden of Proof as to a Particular Issue Shall Serve Expert Reports;

3. July ~~5~~ 3, 2008—Responsive Expert Reports Shall be Served;
4. August ~~10~~ 8, 2008—All Expert Discovery, including expert depositions, to be completed;
5. October ~~26~~ 24, 2008—Deadline to File and Serve All Dispositive Motions;
6. November ~~28~~ 21, 2008—Final Pre-trial Order, provided that, in the event that dispositive motions are pending, this deadline shall be suspended until such time as the Court orders otherwise;
7. December ~~12~~ 17, 2008—Final Pre-trial Conference, provided that, in the event that dispositive motions are pending, this deadline shall be suspended until such time as the Court orders otherwise;
8. ~~April 2~~ January 20, 2009—Trial Date, provided that, in the event that dispositive motions are pending, this deadline shall be suspended until such time as the Court orders otherwise;
9. Each Party reserves the right to file a motion to seek a stay of Expert Discovery in the event that a motion for summary judgment is filed. Each Party also recognizes that any motion for summary judgment filed in this action must comply with S.D.N.Y. Local Bankruptcy Rule 7056-1.

Dated: Poughkeepsie, New York  
October 30, 2007.

/s/ Cecelia Morris

---

Honorable Cecelia G. Morris  
United States Bankruptcy Judge

[SIGNATURES CONTINUED ON NEXT PAGE]

Respectfully submitted,

KASOWITZ, BENSON, TORRES &  
FRIEDMAN LLP

By: /s/ David M. Friedman  
David M. Friedman (DF-4278)  
Joseph A. Gershman (JG-8275)  
1633 Broadway  
New York, New York 10019  
Telephone No.: (212) 506-1700  
*Counsel for Plaintiff*

TROUTMAN SANDERS LLP

By: /s/ Harris B. Winsberg  
Harris B. Winsberg (Ga. Bar No. 770892)  
Douglas E. Ernst (Ga. Bar No. 249956)  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
Telephone No.: (404) 885-3000  
*Counsel for Defendants*

## Exhibit 3

SIMPSON THACHER & BARTLETT LLP  
485 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017-3854  
(212) 455-8000

FACSIMILE (212) 455-8502

DIRECT DIAL NUMBER

212-455-3979

**MEMO ENDORSED**

E-MAIL ADDRESS

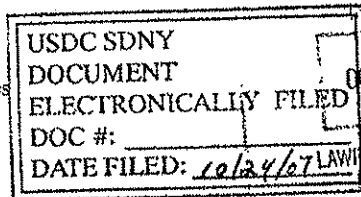
wtussell@sthlaw.com

BY HAND

October 23, 2007

Re: *Adelphia Recovery Trust v. Bank of America, N.A., et al.*,  
Case No. 05 Civ. 9050 (LMM)

The Honorable Lawrence M. McKenna  
United States District Judge  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States  
Courthouse  
500 Pearl Street, Room 1640  
New York, New York 10007



Dear Judge McKenna:

We represent Wachovia Bank, National Association and Wachovia Capital Markets, LLC (f/k/a Wachovia Securities, Inc.), named defendants in the above-captioned action. We write this letter on behalf of the parties who have appeared in the above-captioned action.

On September 21, 2007, we submitted to Your Honor a proposed discovery plan for Your Honor's consideration in accordance with the Court's Memorandum and Order dated August 1, 2007 (as amended by the Court's Memorandum and Order dated September 7, 2007). In our cover letter accompanying this proposed discovery plan, we indicated that there were a few defendants who had not yet decided whether they would participate in the Phase One process described in the proposed discovery plan.

We write this letter to report to Your Honor that each of the defendants listed in footnote 1 of the proposed discovery plan, with the exception of one defendant, has confirmed its agreement to participate in the Phase One process. The parties expect that the remaining defendant, who only recently retained outside counsel, will likewise agree to participate in the Phase One process once its counsel has had the opportunity to familiarize itself with these proceedings and with the proposed discovery plan.

Regardless of whether that defendant decides to sign on to the Phase One process, all other parties are prepared to declare effective the agreement concerning the Phase One process, and agree that the Court should approve the proposed discovery plan at this time. Several of the dates in the proposed discovery plan are triggered by this Court's

LOS ANGELES

PALO ALTO

WASHINGTON, D.C.

BEIJING

HONG KONG

LONDON

TOKYO

SIMPSON THACHER & BARTLETT LLP

The Honorable Lawrence M. McKenna -2-

October 23, 2007

entry of an order embodying the schedule set forth in the proposed discovery plan, and the parties who have appeared in this action agree that there is no need to wait any longer for this one defendant. The parties hope to provide the Court with a status report as to this defendant as soon as possible.

We are available at Your Honor's convenience if the Court has any questions or wishes to discuss this matter.

Respectfully,

*William T. Russell, Jr.*

William T. Russell, Jr.

cc: The Honorable Daniel H. Weinstein (by email)  
Jed Melnick, Esq. (by email)  
All counsel of record (by email)

*The discovery plan annexed to Mr. Russell's letter to the Court of 8/21/07 is approved. (The one defendant who has not, as of this date, decided to agree to the plan may, if necessary, write to the Court setting forth with specificity his objections.) So ordered.*

*L. — MR —  
(SM) 10/24/07*

*1. Mr. Russell is requested to communicate a copy of this endorsement to all interested counsel.*

## Exhibit 4



KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP  
David M. Friedman (DF-4278)  
Joseph A. Gershman (JG-8275)  
1633 Broadway  
New York, New York 10019  
Tel: (212) 506-1700  
Fax: (212) 506-1800

WILLKIE FARR & GALLAGHER  
LLP  
Terence McLaughlin (TM-287)  
787 Seventh Avenue  
New York, NY 10019  
Tel: (212) 728-8000  
Fax: (212) 728-8111

*Counsel to the Adelpia Recovery Trust*

*Counsel to Reorganized Debtors*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re	)	
	)	Chapter 11 Case
ADELPHIA COMMUNICATIONS CORP., et al.,	)	
a Delaware corporation,	)	Case No. 02-41729 (REG)
	)	
Debtors.	)	
	)	
ADELPHIA COMMUNICATIONS CORP., et al.,	)	Adv. Pro. No. 04-03293
	)	(CGM)
Plaintiffs,	)	
vs.	)	
	)	
PRESTIGE COMMUNICATIONS OF NC, INC., et al.,	)	<b>ORDER GRANTING</b>
	)	<b>LEAVE TO FILE</b>
Defendants.	)	<b>AMENDED COMPLAINT</b>
	)	

THIS MATTER having been presented to the Court upon the motion of Plaintiffs to file an amended complaint pursuant to Fed R. Civ. P. 15(a); and the Court having considered the arguments of counsel in support of and in opposition to the motion; and for good cause having been shown;

IT IS HEREBY ORDERED that Plaintiffs are granted leave to file and serve the Amended Complaint, in the form attached to Plaintiffs' notice of motion, within 10 days of the entry of this Order

And IT IS FURTHER ORDERED that the Defendants have 30 days from the date of service of the Amended Complaint to file their Amended Answer.

Dated this 22nd day of March, 2007

/s/ Cecelia Morris  
CECELIA G. MORRIS, U. S. B. J.